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SENATE

{ REPORT
98-408

AMENDING THE NATIVE AMERICAN PROGRAMS ACT OF 1974 TO IMPOSE CERTAIN LIMITATIONS WITH RESPECT TO THE ADMINISTRATION OF SUCH ACT AND TO AUTHORIZE APPROPRIATIONS UNDER SUCH ACT FOR FISCAL YEARS 1985, 1986, AND 1987, AND FOR OTHER PURPOSES

APRIL 18, 1984.—Ordered to be printed

Filed under authority of the order of the Senate of April 13 (legislative day, March 26), 1984

Mr. ANDREWS, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 2184]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2184) to amend the Native American Programs Act of 1974 to impose certain limitations with respect to the administration of such act and to authorize appropriations under such act for fiscal years 1985, 1986, and 1987, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 2, line 5, strike out all of line 5 and line 6.
2. On page 2, line 7, strike out the numeral 2 and insert in lieu thereof, the numeral 1.
3. On page 2, after line 8, insert a new subsection (2) as follows:

(2) at the end of subsection (a), add the following: "Every determination made with respect to a request for financial assistance under this section shall be made without regard to whether the agency making such request serves, or the project to be assisted is for the benefit of, Indians who are not members of a federally recognized tribe. To the greatest extent practicable, the Secretary shall ensure that each project to be assisted under this title is consistent with the priorities established by the agency which receives such assistance."

4. On page 3, line 11, strike out "Secretary" and insert in lieu thereof "Commissioner".

PURPOSE

S. 2184, the Native American Programs Act Amendments of 1983, would reauthorize and amend the Native American Programs Act of 1974 to impose certain limitations with respect to the administration of the Act and to authorize appropriations for fiscal years 1985, 1986, and 1987.

BACKGROUND AND NEED

The Native American Programs Act, which was passed in the 93d Congress, established the Administration for Native Americans (ANA) within the Department of Health, Education, and Welfare. The ANA is now constituted in the Department of Health and Human Services. Its legislative mandate is to promote economic and social self-sufficiency for American Indians, Alaskan Natives, and Native Hawaiians.

According to the 1980 census, there are 1.4 million American Indians in the United States. Although there is considerable mobility between reservation and urban areas, it is estimated that about one-half live on Indian reservations or in rural areas near those reservations; the other one-half live in urban areas or away from reservations. It is also well-documented that American Indians and Alaskan Natives rank lowest in all indicators of social and economic well-being. For example, Native Americans suffer from the poorest health, the worst housing, the highest school drop-out rates, and the greatest levels of unemployment. These conditions are related to social and economic underdevelopment, and hence, the need for federal programs that can assist Native American communities and their families to become self-sufficient.

The ANA mission is to fund programs aimed at providing community or tribal self-sufficiency. The ANA program defines self-sufficiency as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long range social and economic goals. It is the only agency within the Department of Health and Human Services which serves all Native Americans; without regard to where they live or their tribal or group affiliation. Its constituents include American Indians, Native Hawaiians, and Alaska Natives. The ANA has a broad mission which involves cooperative efforts with other Federal agencies to avoid duplication of programs and to maximize federal dollars. The program operates under the philosophy that no federal program, acting alone or in concert with other federal programs, can achieve self-sufficiency for Native American tribes or groups. The ANA programs promote the concept that self-sufficiency can be achieved only when Native Americans plan, design and operate their own social and economic programs which address the particular needs of their communities. The ANA policies are designed to support this approach at the community level through the following goals:

(1) *Governance.*—To strengthen Tribal governments, Native American institutions and local leadership to assure local control over all resources.

(2) *Economic development.*—To foster the development of stable, diversified local economies to provide jobs and reduce dependence on welfare services.

(3) *Social development.*—To support access to, and coordination of, services and programs which safeguard the health and well-being of Native Americans, and which are essential to a thriving and self-sufficient community.

The Native American constituency is diverse in terms of its culture, legal status, size, resources, level of community development, and eligibility for federal services. The diversity of the distinctions many times is confusing and has resulted in serious gaps in services or assistance to Native Americans. The ANA has the statutory authority to bridge these confusing and complex relations between the Native American groups and the federal government. The flexibility of the program has given many tribes and groups access to federal assistance and has brought them closer to their goals of social and economic self-sufficiency. Unlike the Bureau of Indian Affairs and the Indian Health Service, both major sources of Federal Indian services, the ANA program provides assistance to nonfederally recognized and terminated Indian tribes, as well as other off-reservation Indian organizations, including urban Indian centers.

The ANA program provides support for over 60,000 Alaskan Natives through its assistance to the twelve regional and numerous village corporations. These entities were established pursuant to the Alaska Native Claims Settlement Act and proves a variety of social and economic projects to the villages in the areas of employment, increased village control over their own resources, and the well-being of its community members.

The ANA provides assistance to Hawaiian Natives. Although Hawaiian Natives constitute neither a tribal nor legally designated corporate structure, they have maintained a strong cultural identity. Congress recognized their cultural strength and longevity, by recognizing them as Native Americans for purposes of the Native American Programs Act. The ANA has funded a Native Hawaiian corporation since 1976, which now includes satellite centers on five major islands. In addition, the ANA funds an economic development project for Hawaiians. It is important to note that the ANA is a major source of assistance to Hawaiian Natives, as they do not receive services from the Bureau of Indian Affairs, or the Indian Health Service.

When the ANA first began, the program emphasis was primarily to support the core administration of tribal governments and Native American organizations. Its secondary emphasis was to support local access to social services or to fill gaps in those services. Since that time, the program has moved towards the larger objective of improving the social and economic development of tribes and other native organizations. In 1980, the ANA began the implementation of a initiative called Social and Economic Development Strategy (SEDS) which encourages tribes and native organizations to develop projects that promote social and economic development. A fiscal year 1982 Department of Health and Human Services (HHS) evaluation of Native American programs, conducted by the Secretary for Planning and Evaluation, concluded that the developmental approach of the ANA program was responsible for its suc-

cess. The evaluation further found that grantee strategies resulted in job creation and placement, natural resource development, and improved. According to the study linkages between the private sector and state and local governments, economic benefits amount to a threefold return on the federal investment. The Native American Programs Act, as administered by HHS, has assisted all Native American groups to leverage additional dollars for their efforts towards economic and social self-sufficiency.

The authorization for appropriations for the ANA program contained in title VIII of the Economic Opportunity Act expires at the end of fiscal year 1984. S. 2184. Will reauthorize the ANA through fiscal year 1987.

LEGISLATIVE HISTORY

S. 2184 was introduced on November 18, 1983, by Senator Andrews, for himself and Senators Melcher, Abdnor, Hart, DeConcini, Stevens, Matsunaga, Burdick, Domenici, Hatfield, Riegle, Murkowski, Inouye, Kennedy, Bingaman and Goldwater. The bill was subsequently referred to the Select Committee on Indian Affairs for consideration. On March 15, 1984, at which time it ordered the bill reported favorable, with amendments.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on April 9, 1984, with a quorum present recommends by a unanimous vote that the Senate pass S. 2184, as amended.

AMENDMENTS

The Select Committee on Indian Affairs, at its business session on April 9, 1984, ordered S. 2184 be reported with four amendments. These amendments are set forth in full at the beginning of their report. Their purposes are explained in the Section-by-Section Analysis that follows.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 of S. 2184 provides that the title of this Act may be cited as the "Native American Programs Act Amendments of 1983."

Section 2(a)

Amends Subsection (a) of section 803 of the Native American Programs Act of 1974 to provide financial assistance to governing bodies of Indian tribes on Federal and State reservations; Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act; and such public and nonprofit private agencies serving Hawaiian natives; and Indian organizations in urban or rural areas for projects which come within the scope of the Act. This amendment deletes the phrase "including but not limited to" in the first sentence of subsection (a) of section 803 to specify that no differentiation or preference will be given to the categories of ties, groups, organizations or agencies eligible to receive

financial assistance pursuant to the Act. It is the intent of this section all current categories of eligible to receive financial assistance pursuant to the Act. It is the intent of this section that all current categories of eligible entities continue to be eligible to receive financial assistance under the Act. In addition, subsection (a) of section 803 is further amended by providing that determination for financial assistance under this section is to be made without regard to whether the agency making such request serves, or the project to be assisted is for the benefit of Indians who are not members of a federally recognized tribe. The Secretary should make every effort to insure that assistance to each project funded under this section is consistent with the priorities established by the agency that receives such assistance.

Section 2(b)

Amends Subsection (c) of Section 803 of the Native American Programs Act of 1974 to provide that no project may be disapproved for financial assistance under this act solely because the agency requesting assistance is an Indian organization located in a nonreservation area or serving Indians in a nonreservation area.

Section 3

Amends Section 812 of the Native American Programs Act of 1974 by rewriting the Section to provide the following:

(a)(1) that the general administration of the programs authorized under this Action shall remain within the Department of Health and Human Services and, notwithstanding any authority under any other law, may not be transferred outside of such Department.

(2) that the Secretary shall administer grants under section 803 through the Administration for Native Americans and the Commissioner of the ANA may not delegate outside the ANA functions, powers, and duties of the Secretary.

(b)(1) except as provided in subsection (a)(2), the Secretary is authorized to delegate his functions, powers and duties to heads of other departments and agencies of the Federal Government.

(2) provides for transfer of funds appropriated for purposes of carrying out this act.

(c) provides that nothing in this section shall be construed to prohibit interagency funding agreements made between the ANA and other agencies of the Federal Government to develop or implement specific grants or projects.

Section 4

Provides the definition of the term "Secretary".

Section 5

Reauthorizes the Native American Programs Act of 1974 through fiscal year 1987 and that not less than 90 per centum of the funds made available for any fiscal year be used for program purposes.

SPECIAL ISSUES

Although provisions are not included in S. 2184 that addresses the following specific issues, the Committee wishes to provide the

Administration for Native Americans program with these directives:

(1) *Distribution of financial assistance.*—The Committee is concerned that since 1980, there has been a decrease in the numbers of, and the levels of funding to off-reservation grantees. The Administration for Native American programs is directed to make substantial efforts to better serve off-reservation grantees. An annual report shall be submitted to the authorizing committees documenting the categories of tribes and groups funded (i.e. federally recognized Native Americans including tribes, Alaska, and consortiums; and non-federally recognized Native Americans including tribes, urban, rural, consortiums, Native Hawaiians; and special grants and interagency transfers). This report shall also include the number of grants allocated in each of the categories and the level of funding to each grantee.

(2) *Policy changes.*—The Committee is concerned that ANA policy changes have resulted in confusion among grantees. For example, the Social and Economic Development Strategy (SEDS) has received mixed reviews. It has worked well for some grantees. For others, it has prohibited them from the important assistance needed to support local access to and coordination of services and programs which safeguard the health and well-being of Native Americans. The ANA, in its testimony before the Committee reiterated the premise of this legislation in stating “. . . the local Native American community has the primary responsibility for determining its own needs . . .” The Committee directs the ANA to submit to the authorizing committees for review and approval, only after consultation with the tribes, groups, and organizations, any substantial policy changes in the ANA programs. The Committee further clarifies that current law specifically states that grants are to go to public, non-profit organizations. S. 2184 does not amend the Native American Programs Act of 1974 in any way to include “for profit” organizations. It is the opinion of the Committee that further analysis of the “for profit” concept is required before the Act is amended to include “for profit” organizations.

(3) *Panel review and appeals process.*—Committee has received numerous complaints from tribes, groups, and organizations regarding the process for reviewing proposals submitted to the ANA. Under the current procedures, the readers of ANA proposals come from a variety of backgrounds. However, there are indications that very few of the readers are qualified to evaluate proposals which involve economic development strategies. Generally, readers are selected locally and come from backgrounds which do not necessarily indicate any particular qualifications to evaluate proposals in a given area. Readers are not compensated for their services, which is also a limiting factor in attracting readers with expertises in areas of social and economic development. This situation is viewed by many of the current grantees and potential grantees of ANA assistance as detrimental to their interests.

Another area of concern to the Committee is the procedure for appealing denial of ANA financial assistance. It is the Committee's understanding that if a proposal for assistance is denied for whatever reason, a new or first-time applicant does not have a right or opportunity to appeal such decision. In cases of repeat or continu-

ing projects, those grantees can only appeal to the Commissioner of ANA. Generally, those appeals are resolved at the staff level of the central office. Tribes, groups, and organizations eligible to apply for ANA assistance believe the process for appeal is arbitrary.

In consideration of the aforementioned concerns, the Committee directs the Secretary of Health and Human Services, in conjunction with the Commissioner of the Administration for Native Americans, to explore alternatives to the current (1) Panel Review Process, and (2) Appeals process. The Committee further directs that a written manual incorporating both the proposal review and the appeals process be developed and submitted to the respective authorizing committees within six (6) months from the date of the enactment of this Act.

COST AND BUDGETARY CONSIDERATIONS

The Cost estimate for S. 2184, as amended, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington D.C., April 10, 1984.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2184, the Native American Program Act Amendments of 1983, as ordered reported by the Senate Select Committee on Indian Affairs, April 9, 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2184.
2. Bill title: Native American Program Act Amendments of 1983.
3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, April 9, 1984.
4. Bill purpose: The purpose of this bill is to amend and extend through 1987 the authorization for the Native American programs at such sums as may be necessary. This bill is subject to subsequent appropriations action.
5. Estimated cost to the Federal Government:

[By fiscal year in millions of dollars]

	1985	1986	1987	1988	1989
Native American programs:					
Estimated authorization level	31	33	35	—	—
Estimated total outlays	18	29	34	14	4

The cost of this bill falls in function 500.

Basis of estimate: The Native American programs are authorized at such sums as may be necessary through 1987. The costs associated with this bill reflect the 1984 funding levels for this program of \$29 million increased by the CBO projection of cost increases through 1987. The estimated total outlays reflect current program spending patterns.

6. Estimated costs to State and local governments: S. 2184, the Native American Program Act of 1983, would not affect the budgets of state and local governments.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Kalcevic.

10. Estimate approved by: Charles Seagrave for James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2184 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The legislative report on S. 2184 was not received from the Department of Health and Human Services by the Committee before the filing of this report. However, the following testimony was received by the Department of Health and Human Services at the hearing on the bill held on March 15, 1984.

STATEMENT BY WILLIAM LYNN ENGLES, COMMISSIONER, ADMINISTRATION FOR NATIVE AMERICANS, OFFICE OF HUMAN DEVELOPMENT SERVICES BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, MARCH 15, 1984

Mr. Chairman and members of the committee, thank you for the opportunity to present an overview of the work of the Administration for Native Americans and to comment on our proposal to extend for three years the Native American Programs Act.

The Native American Programs Act promotes self-sufficiency for American Indians, Alaskan Natives and Native Hawaiians by encouraging local strategies in social and economic development. Self-sufficiency is defined as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long range social and economic goals. We consider social and economic underdevelopment to be the paramount obstacle to the self-sufficiency of Native American communities and families. Social and economic underdevelopment contributes to high unemployment, high school drop out rates, poor health and other problems which affect Native Americans to a greater degree than almost any other population group. The lack of a strong diversified economic base has made Native American-designed, Federally-designed, Federally-funded and Federally-operated programs.

I would like to address the Administration's proposal to extend the Native Americans Programs Act for the period covering fiscal year 1985 through 1987. The reauthorization basically extends the current law. In addition to the extension, the Administration is requesting that the program authority be amended to allow for-profit private organizations to compete for financial assistance grants (Section 803) under this program. Currently, only public and private non-profit organizations are allowed to participate. Removal of the non-profit restriction would support the Department's initiative to remove legislative and regulatory barriers to grants to for-profit organizations. This is expected to help the program better achieve its objectives because it will increase competition and should improve quality by allowing selection from a greater number of proposed projects.

Reauthorization of the existing law will enable the Administration for Native Americans' strategy for social and economic development to continue to make a measurable impact on self-sufficiency for Native Americans.

I would also like to comment on S. 2184, now pending before your Committee. This bill, in addition to extending the Native American Programs Act, would place a number of restrictions and prohibitions regarding the administration of this program into the law. The bill would also require that we continue to fund Native Hawaiians, Native Alaskan and non-Federally recognized tribes and organizations.

The Fiscal Year 1985 budget request does not include a proposal to phase out non-Federally recognized tribes. In fact our budget documents specifically state that grants will be made to the same range of Native American groups as we make now. Neither our budget nor our legislative proposal makes any recommendation to shift or otherwise change the administrative or organizational status of the Administration for Native Americans. We therefore oppose the proposals in S. 2184 because they are unnecessarily restrictive.

The Administration for Native Americans programs and policies foster a balanced developmental approach at the community level through three major goals.

- (1) To develop or strengthen tribal governments, Native American institutions and local leadership to assure local control over all resources;
- (2) To foster the development of stable, diversified local economies to provide jobs and reduce dependency on social services; and
- (3) To support local access to, and coordination of, services and programs which safeguard the health and well-being of Native Americans.

These goals are based on the premise that the local Native American community has the primary responsibility for determining its own needs, for planning and implementing its own programs and for building an economic base from its own natural, physical and human resources.

The Administration for Native Americans' funding policy is to assist Indian Tribes and Native American organizations to plan and implement their own long-term strategies for social and eco-

conomic development. This funding approach moves the focus from increasing dependency on social services to increasing productivity of both individuals and communities. This policy supports a competitive review process for awarding grants for social and economic development projects. Successful applications are evaluated on their merits as reviewed against published criteria.

There is evidence that the social and economic development strategies approach supported by the Administration for Native Americans is having a positive impact. For example, the fiscal year 1982 evaluation by the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, found that with our financial assistance grants, tribal and community grantees have become more results oriented. They have identified, with considerable specificity, events and milestones critical to their futures. The evaluation also noted some of the successes already realized by Native American grantees. These included establishment of commercial enterprises and financial institutions, and improved management and profitability of natural resource development.

A more recent evaluation study conducted by the Office of Human Development Services examines the impact of our dollars invested in social and economic development projects. The evaluation demonstrated that the pay-off ratio ranged from three to forty-three dollars for each federal dollar invested. The evaluation suggests that projects funded by the Administration for Native Americans are cost-effective, and are making progress in overcoming long-standing and acute social problems.

This approach has helped Tribes and Indian communities put people to work in non-subsidized employment. It has brought about private sector participation in the reservations and with urban Indian communities as well. The policy of funding social and economic development strategies allows maximum local flexibility for self-determination and provides for marshaling and directing Federal, state, local, tribal or organizational resources toward local objectives while avoiding duplication in funding and programs. The focus is on the greatest impact on social and economic self-sufficiency.

Some specific projects and program accomplishments can be cited. Here are several examples:

The Mississippi Band of Choctaw Indians' economic development efforts have resulted in the construction of an 80 acre industrial park with several tribally owned industries. The success of these social and economic development strategy efforts is reflected in 500 jobs created, reduced unemployment, a 24% decrease in the 1983 welfare assistance caseload, and a significant reduction in the suicide rate on the Choctaw Indian Reservation.

Choctaw is not an isolated example. In fiscal year 1983 the annual total of new jobs for Native Americans resulting from our projects was 12,982.

A total of 111 Indian business efforts were initiated or expanded in fiscal year 1983. For example, the Administration for Native Americans in cooperation with the Atlantic Richfield Company, a major energy company, assisted the Montana Indian Targeted Jobs Project to establish businesses and create jobs for Indians in fields related to energy resource development.

In fiscal year 1983, \$100 million in revenue was generated through energy resource development. Six lease settlements have been negotiated at more favorable rates to the Tribes. Nine Tribes have evaluated the development of coal, oil, gas and uranium reserves. Six tribal codes were developed to provide for national energy resource development.

The governmental functions of 16 Tribes have been strengthened through the enactment of codes involving the regulation of mining, air quality control, commercial business, the environment and taxes.

The Alaska initiative involved the award of 15 grants in fiscal year 1984 for a total of \$1.5 million for Village level social and economic development projects. These Alaska Native village projects cover a variety of areas that create permanent unsubsidized jobs, increase village control over their own resources and improve the general well-being of community members.

ANA grant assistance over 3 years to the Hikiola Cooperative of Hoolehua enabled Native Hawaiian products to be produced on ancestral lands and to be marketed competitively. The project also improved management, supported effective inventory control of products and adequate equipment servicing, as well as assured the receipt of technical assistance on modern agricultural techniques to cooperative members. As a result of the cooperative, 30 businesses have been established, 30 full-time farmers have been employed and gross sales have expanded to \$40,000 per month. This economic development project is now self-sustaining without ANA financial assistance and is a major step for the Hawaiian Natives on Molokai toward social and economic self-sufficiency.

I appreciate the opportunity to appear before the Committee. I will be happy to answer any questions you may have at this time.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states as follows: It is the opinion of the Committee that it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

